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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.T., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

D.T.,

Defendant and Appellant.

E065520

(Super.Ct.No. RIJ1200473)

OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,
Judge. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and
Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Deputy County Counsel,
for Plaintiff and Respondent.

D.A.T. (Father) appeals the denial of his Welfare and Institutions Code¹ section 388 petition. A section 300 petition was filed against Father and D.T.T. (Mother) for engaging in domestic violence. Father was granted visitation with D.T. (Minor). During the pendency of the section 300 petition, Minor disclosed she had been sexually assaulted by Father. A section 342 petition was filed against Father alleging the sexual abuse. Visitation was suspended and the juvenile court ordered that it resume when Minor's therapist recommended visitation and was in her best interest. Father filed a section 388 petition contending the juvenile court improperly delegated its authority to Minor's therapist to manage and control visitation. We affirm the juvenile court's denial of the section 388 petition.

FACTUAL AND PROCEDURAL HISTORY

A. SECTION 300 PETITION

On August 13, 2013, the Riverside County Department of Public Social Services (the Department) received a referral that Father had been arrested on August 7, 2013, for hitting Mother. Mother contacted the Department stating she was in a recovery center with five-year-old D.P. and four-year-old Minor (collectively, the children).

Prior to meeting with Mother and the children, a social worker investigated the family history. In 2004, Mother reported her boyfriend had sexually abused her one-

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

month-old son B.P., but the report was unsubstantiated. Mother lost custody to B.P. in October 2005, due to engaging in domestic violence with her prior boyfriend.

In 2009, Father left the children at home with Mother while he went to work. It was reported Mother left the children home alone in order to use controlled substances. The children were taken into protective custody. On February 9, 2010, Father was granted sole custody of the children.

In 2012, another referral was received by the Department. Father had an injury to the side of his neck where Mother had attempted to stab him with a pair of scissors. The children were present when it happened and witnessed the event. Mother was still using controlled substances. She reported she had visited the children several times while they were in Father's custody. She had observed Minor sit on Father's lap and make "sex noises." The report was investigated, but not substantiated. The children remained in Father's care and family maintenance services were ordered. Jurisdiction was terminated on January 3, 2013, and Father was granted sole custody of the children.

After reviewing the family history, the social worker met with Mother and the children on August 15, 2013. Mother expressed her concern about Father being sexually inappropriate with Minor. Mother explained Father had been arrested because he "socked" her in the face with a closed fist. Mother claimed they were fighting because Father had wanted Minor to sit on his lap. Father took Mother's cell phone and keys and locked them up. She went to a neighbor's house and called the police. The children

witnessed the incident. She also accused Father of hitting her in the face about a month prior to this incident.

The social worker interviewed the children. Minor was crying at first. When asked about hitting or yelling in the home, she responded that Father was in jail. She had seen Father hit Mother in the face. Minor denied that anyone had ever put anything in her private parts. D.P. was crying and did not want to speak with the social worker. He finally told the social worker that Father was in jail because Minor had been sitting on his lap. D.P. saw Mother spit in Father's face and he hit her. D.P. was asked if anyone had touched his private parts and he said no. When asked if anyone had touched Minor, D.P. responded, "Yes my daddy." D.P. said that Father put a "toothbrush there." D.P. had seen him do it. Father did not know D.P. was watching.

The social worker determined that the children needed to be detained due to the domestic violence.

Mother had a criminal history, which included convictions for possession of controlled substances, battery, petty theft, and corporal injury to a spouse. On October 5, 2009, Father was named the presumed father of D.P., although he denied he was the biological father. He had previously been named the presumed father of Minor.

On August 19, 2013, the Department filed a section 300 petition against Father and Mother for the children. It was alleged under section 300, subdivision (b), that Mother and Father failed to protect the children, that the children had suffered or would suffer serious bodily harm due to Mother and Father's violent acts against each other, and

they both had criminal histories and prior history with the Department. It was additionally alleged that Mother abused controlled substances. It was additionally alleged that Father had no ability to support the children because of his incarceration within the meaning of section 300, subdivision (g). No allegations of sexual abuse were included in the petition.

At the detention hearing, the juvenile court found a prima facie case and ordered the children detained.

A jurisdiction/disposition report was filed on September 16, 2013. The Department recommended that Father receive reunification services and that Mother be denied services. The children had been placed in a foster home. Father remained incarcerated. The Department discovered Mother moved back in with Father each time a dependency investigation would terminate despite Father having sole custody. Mother had used cocaine with Father in the past and she reported he recently used marijuana. Father was interviewed and insisted he had been sober for 20 years.

It was recommended once Father was released from custody that visitation occur two times each week. Father hoped to be released from custody by the date of the jurisdiction/disposition hearing. A report filed November 7, 2013, indicated Father had been released from custody and attended visitation with the children. He would continue weekly visits for two hours.

Another addendum report was filed on January 29, 2014. Father had been consistently visiting with the children. Father was attending domestic violence classes.

The Department was recommending weekend supervised visits between Father and the children.

At the jurisdiction/disposition hearing held on February 6, 2014, Mother and Father waived their rights to a hearing. The juvenile court found the section 300, subdivision (b) allegations true; the subdivision (g) allegation was found not true. Father was granted reunification services, and Mother was denied services. Visitation was to be directed by the Department, but the juvenile court authorized unsupervised day visits between Father and the children.

A six-month review report was filed on May 6, 2014. It was recommended that reunification services continue for six months. Father was living in a boarding house and working full time. Father received probation for the domestic violence incident and was not to have any contact with Mother.

D.P. was struggling in school. He had been diagnosed with attention deficit/hyperactivity disorder (ADHD). He was also bedwetting. Minor was receiving individual counseling for frequent temper tantrums. Father had an arrest for driving under the influence on November 24, 2013, and was convicted of a lesser reckless driving offense on April. 3, 2014. This was his third DUI arrest. He was on summary probation for the offense. Father had weekly supervised visits with the children. On May 19, 2014, Father's reunification services were continued for six months.

The Department filed a 12-month review report on October 3, 2014. The Department requested a continuance in order to investigate an allegation against Father.

D.P. was taking medication for his ADHD. Minor had been having less temper tantrums. Father had been having weekly, all day unsupervised visits with the children. However, on September 2, 2014, a referral with allegations against Father was received by the Department and was being investigated. Visits were now supervised. Several continuances were granted by the juvenile court.

A report by a clinical psychologist who had been treating the children, dated November 8, 2014, was submitted to the court. D.P. had disclosed that Father had “whipped” him every night prior to his detention. Further, his increased bedwetting coincided with Father being released from prison and having a first visit with Father. D.P. had not talked about the abuse before because he was told they were “secrets.”

Minor was exhibiting signs of sexual abuse. She was hypersexual for her age. She flirted with males. She invited boys and girls to touch and kiss her. Minor advised the therapist she did not like seeing Father and had nightmares about him. She reluctantly told the therapist that Father had messed with her “down there.” She had not said anything before because she had been told they were “secrets.” Minor was more difficult to deal with the day after visits with Father.

The therapist stated: “In answering the question if or in what form the visits with father should be continued it is difficult to come to a simple conclusion. At this point it seems to be indicated to attempt a temporary separation from the father for three to six month[s] to see if the behavior of the children is changing and the therapy is working for

them. Especially the bedwetting of [D.P.] and the oversexed behavior of [the child], if dependent on the visits of the father, should by then have improved.”

On November 14, 2014, Father was granted six additional months of reunification services. The juvenile court temporarily suspended visitation between Father and the children. It stated that if a therapist recommended visitation, that visits would occur during a therapy session.

B. SUPPLEMENTAL SECTION 342 PETITION

On November 24, 2014, the Department filed a section 342 petition against Mother and Father. The Department alleged pursuant to section 300, subdivision (b), that Father had sexually abused Minor by fondling and penetrating her with a foreign object. Also, Minor was “made to gratify the father, while sitting on his lap.” The Department also alleged Mother was aware of the abuse and did nothing to stop it, and D.P. was exposed to the sexual abuse of a sibling. There was an additional allegation of sexual abuse under section 300, subdivision (d), and abuse of a sibling pursuant to section 300, subdivision (j).

According to the report submitted with the section 342 petition, on October 1, 2014, the foster mother reported that Minor was acting out sexually. Minor had disclosed to foster mother that Father had inserted an object into her vagina and it caused pain. She did not want to visit with Father. Minor also advised the social worker Father had rubbed her genital area and D.P. had been a witness. He also inserted an object into her vagina.

D.P. also told the social worker Father had inserted an object into Minor's vagina. A report was made to the Riverside County Sheriff's Department.

A "RCAT" interview was conducted. Minor disclosed she would "ride" Father while he was lying on the floor, and she would feel him "poking" her. This happened multiple times, and Mother had to remove her from his lap. Mother was interviewed. She knew nothing about Father inserting an object in Minor's vagina. She had witnessed Minor on Father's lap "grinding" on him and making moaning sounds. Father would get an erection. This happened multiple times each week when they were living together, and Mother would have to remove Minor from his lap. Mother also reported she found Father in D.P.'s bedroom one night with D.P.'s pants down. Father claimed to be fixing the blinds.

The Department also noted the children's therapist was recommending suspending visitation between the children and Father for three to six months. The juvenile court found a prima facie case had been made. Visits between Father and the children remained suspended.

C. JURISDICTION/DISPOSITION REPORT ON SECTION 342 PETITION

A jurisdiction/disposition report on the section 342 petition was filed on December 15, 2014. The children reported Father had sexually abused Minor. They both reported Father had inserted a toothbrush into Minor's vagina. Father requested visitation be restored and wanted custody of the children. Father insisted the children were being coached by Mother.

D.P. was improving in school and his behavior had much improved. Minor's temper tantrums were decreasing. The matter was continued.

An addendum report was filed on January 20, 2015. The Department recommended Father no longer be offered reunification services pursuant to section 361.5, subdivision (b)(10) and (b)(13). A police report regarding the investigation of the sexual abuse by Father was attached. Details of the RCAT interview with Minor were included. She claimed when she was three years old, Father got angry with her. He made her pull down her pants and he inserted the handle of a toothbrush in her vagina. D.P. was present. D.P. confirmed her story.

Father was interviewed by the sheriff's department. Father claimed that Mother had made up the accusations of sexual abuse in order to gain custody of the children. Mother had influenced Minor. Father explained he had caught Minor in the bathroom naked, holding a toothbrush to her vagina. He told her to stop. Father accused Mother of using the incident to get custody of the children.

Father took a polygraph. After the interview, the examiner expressed that Father was not being completely truthful about putting something in Minor's vagina. Father then recalled when he caught Minor masturbating with the toothbrush, he tried to grab it from her and pushed it forward. She started to cry. D.P. was behind him.

Father started crying in the interview. The police report concluded that the cause of the toothbrush penetrating Minor was accidental. No further action was anticipated by the sheriff's department.

A section 366.22/18-month permanency status review report was filed on February 6, 2015. The Department recommended that reunification services for Father be terminated and that a section 366.26 hearing be set with the permanent plan of adoption.

On November 8, 2014, D.P. told his therapist he was not afraid of Father. However, he continued to have bedwetting problems. On January 7, 2015, the therapist advised the social worker that he continued to recommend no visitation between the children and Father. On January 21, 2015, the foster mother reported Minor continued to masturbate frequently. The social worker asked Minor why and she responded, "I got it from dad he would mess with my stuff." Father had completed his counseling, he was in the process of completing the domestic violence course, and he had negative drug tests. The Department recommended the juvenile court find visitation with Father would be detrimental.

An addendum report was filed on March 9, 2015, to provide a status report from the children's therapist. The therapist had seen the children three additional times since the last report. D.P. was still bedwetting despite the cessation of visitation with Father. As for Minor, she continued to be negative about Father. She would not describe the exact nature of the sexual abuse by Father. The therapist determined it would take additional therapy to determine the extent of the abuse.

A report from the therapist from December 10, 2014, was also attached. The therapist reported that since D.P. stopped visiting with Father, he was more relaxed in the

foster home, he had less temper tantrums, and he had improved in school. He still was bedwetting. Minor continued to be defiant and needed to dominate every situation. She still demonstrated being hypersexual. No major improvements had been seen since discontinuing visitation with Father although there was some progress in therapy. Minor had disclosed she had seen Father's "peepee" when they were in bed one time.

The 18-month review hearing on the section 300 petition and the contested jurisdiction hearing on the section 342 petition was conducted on March 18, 2015. Reunification services for Father were terminated for failing to complete his case plan on the section 300 petition only. On the section 342 petition, the juvenile court granted Father reunification services. Visitation was authorized between Father and Minor "in a therapy setting." Visitation was granted with D.P. no less than two times each week. As for [Minor], the court authorized liberalized visitation when "the therapist deems it appropriate and it's okay for her."

The Department filed an amended section 342 petition. The allegation against Father was changed to serious emotional damage (§ 300, subd. (c)), and stated that Minor alleged Father inappropriately touched her, but it was determined Father's intentions were not criminal. However, Minor feared being returned to Father's care and she had no parent who was able to provide support. The other allegations of sexual abuse were stricken.

The Department submitted an updated case plan for the section 342 petition. Father was to participate in family counseling with both the children as deemed necessary

by the therapist. It included, “The social worker will arrange and facilitate visitation between the children and the parents, when it is deemed that visitation with one or both parents is not detrimental to the children.”

The Department submitted a six-month review report for the section 342 petition. It was recommended visitation with Father be suspended but that he continue to receive reunification services. Father had obtained a job and was residing at a shelter.

It was reported D.P. had increased angry outbursts, tantrums and property destruction since resuming visits with Father. D.P. had been moved to a new therapist. During the intake appointment, D.P. disclosed he had been asked during recent visitation with Father to lie about Minor’s report of sexual abuse. Father told D.P. to tell Minor to recant her story of abuse. The therapist who spoke with D.P. opined he was suffering from trauma reliving the domestic violence and sexual abuse each time he had to visit with Father.

Minor began participating in a clinic for sexual abuse treatment. On June 9, 2015, Minor told her new therapist she was “scared” because D.P. told her Father wanted her to lie about the sexual abuse. She had made improvements but was still masturbating three times a day. Minor also told the foster mother about Father wanting her to recant her sexual abuse allegations.

Father had not begun his new case plan and did not want to sign it without speaking with his attorney. Father advised the social worker he had completed therapy and did not intend to complete any further therapy. He had not enrolled in a parenting

class. Father denied telling D.P to encourage Minor to recant her allegations. The Department had “grave concerns” about continued contact between Father and Minor. Minor reported on June 15, 2015, she did not want to visit Father. The Department stated it was not in the children’s best interests to visit with Father. The Department recommended visits with D.P. should be suspended until advised by the therapist.

On July 20, 2015, the matter was heard regarding the review report. Father objected to the visitation recommendation and the matter was set contested. In the meantime, D.P.’s counsel approved of continued visitation. Minor’s counsel did not object to supervised visits with Father. The trial court authorized a supervised visit between the children and Father after court.

The Department submitted another report prior to the contested hearing. The social worker supervised the after-court visit. Father spent most of his time talking to D.P. as Minor kept her distance from Father. Father had three visits with D.P. since the prior hearing and they went well.

On August 11, 2015, the social worker contacted Minor’s therapist regarding the possibility of visits between Minor and Father. Minor had stated in therapy that after the visit with Father in court, she was uncomfortable having her Father hug her and she did not want to visit with him. She was crying. Two therapists recommended Minor not have visits with Father. No visits were scheduled based on the recommendation of the therapists.

The matter was heard on August 26, 2015. The Department recommended that visits between Father and Minor be in a therapeutic setting with the recommendation of the therapist. Minor's counsel asked the juvenile court to find that visits with Father were detrimental because they caused her anxiety and stress.

Father's counsel requested some indication from the therapist as to a benchmark when the therapeutic visits could begin. Father's counsel also sought to have Minor's therapist speak with Father. Father's counsel stated: "There should be some type of inclination as to the treatment or what we are going to do going forward or we will be here in the same position in six months."

The juvenile court ordered an additional six months of reunification services for Father on August 26, 2015. The juvenile court ordered a review hearing on October 29, 2015, regarding visitation. The juvenile court ordered, "For [Minor], the visitation order remains with father. That's visits to be in a therapeutic setting upon a therapist recommendation. [¶] . . . [¶] I'll authorize the children's therapists to meet with father if they deem it necessary and appropriate." The juvenile court ordered an addendum report prior to the next hearing on the progress.

The addendum report was filed on October 26, 2015. Father was visiting with D.P. weekly and the visits were appropriate. The social worker contacted Minor's therapist on October 1, 2015. Minor had continued to advise the therapist she did not want to have visits with Father. The therapist did not recommend that visitation resume.

Father continued to engage in services. Minor was doing well in therapy. She had less anger, but still continued to masturbate frequently.

At the hearing, the Department asked that the order regarding visitation with Minor remain the same. Father's counsel stated, "With [the child], submit on still with the therapist recommendation, but I would ask that the social worker at least periodically question the therapist about the efforts to move forward in some manner or the reasons why, so if we can get something in writing about that. We didn't have really anything in writing today." Father's counsel also noted that Father had not been contacted by the children's therapists. Father's counsel concluded, "But again, we would just ask that we get some periodic inquiries to the therapist to see where we are." The juvenile court ordered a report from the therapist as to whether Minor was ready to start conjoint therapy with Father.

The 12-month status review report was filed on January 13, 2016. The Department recommended terminating family reunification services for Father on the section 388 petition. He had made progress but did not complete his case plan. D.P. was eight years old at the time of the report. He continued to struggle with bedwetting and still had some anger issues. Minor was six years old. She continued in therapy. She was making progress, stating she understood she was not responsible for what had happened to her. She continued to masturbate two times each day. Her temper tantrums had decreased. There were two attachments written by the therapists seeing the children. D.P.'s therapist reported he was making good progress. There were still concerns

regarding his bedwetting. There was no information regarding visitation with Father. Minor's therapist reported she continued to benefit from treatment. She talked less and less about her biological family. She had less negative behaviors.

D. SECTION 388 PETITION

On January 21, 2016, Father's counsel filed a section 388 petition asking the juvenile court to reconsider visitation between Minor and Father. Specifically, Father sought to change the order issued on November 14, 2014, which suspended visits between Father and Minor and that visits would occur when the therapist deemed it appropriate. In an attached memorandum of points and authorities, Father's counsel argued the juvenile court could not delegate its authority to decide visitation to a private therapist. Father had no visits with Minor since November 2014 because the therapist refused to authorize visitation. Father sought to have the juvenile court modify the visitation order and order supervised visits between Minor and Father.

The Department filed an addendum report and a response to the section 388 petition. As for visitation between Father and Minor, the Department referred to discussions with Minor's therapist on August 11, 2015, and October 28, 2015, where she told her therapist she did not want to visit with Father and that he did "nasty" things to her. Further, on February 4, 2016, Minor still reported to her therapist that she did not want to visit with Father. The therapist reported: "[I]n regards to visitations, visitations should take place when it is in the best interest of [Minor]. Without knowing if [Minor's] father has made enough progress in his own mental health treatment to be able to provide

[Minor] with messages that promote healthy emotional development, she cannot make a recommendation.” The therapist also noted that if the juvenile court ordered visitation, it should be in a therapeutic setting. Also, it was recommended that Minor not attend court proceedings as she reported feeling uncomfortable when Father hugged her at the prior hearing.

In a face-to-face meeting with the social worker on February 4, 2016, Minor told the social worker she did not want to have visitation with Father “because of the things that he did to me.”

On February 19, 2016, the trial court issued a written order denying the section 388 petition finding that (1) the request did not state new evidence or a change of circumstances; and (2) the proposed change of order, recognition of sibling relationships, or termination of jurisdiction did not promote the best interests of Minor. No hearing was granted.

The matter was set for a contested review hearing on February 22, 2016, and then continued to March 23, 2016. The juvenile court ordered for that hearing, “Dad, if you’re not in counseling, you should be. So with father’s counseling, along with [Minor’s] therapist, an update on her progress and whether or not it’s appropriate for her to begin therapeutic visitation with father.” Father filed a notice of appeal prior to the contested review hearing.

DISCUSSION

A. SECTION 388 PETITION

Father contends the juvenile court erred by denying his section 388 petition. He insists the juvenile court improperly delegated its power to control visitation between Minor and him to a private therapist by ordering that visitation occur in a therapeutic setting when the therapist concluded it would be in Minor's best interest. Since the order was unlawful, the trial court erred by refusing to modify the visitation order. Further, it was in Minor's best interests during reunification to have visitation with Father.

"Section 388 allows a person having an interest in a dependent child of the court to petition the court for a hearing to change, modify, or set aside any previous order on the grounds of change of circumstance or new evidence." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) "[S]pecific allegations describing the evidence constituting the proffered changed circumstances or new evidence' is required." (*Ibid.*) It "shall set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order or termination of jurisdiction." (§ 388, subd. (a)(1).)

A section 388 petition must state a "prima facie case in order to trigger the right to proceed by way of a full hearing." (*In re Edward H.* (1996) 43 Cal.App.4th 584, 592.) "There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.] If the liberally construed allegations of the petition do not show changed circumstances such that the child's best

interests will be promoted by the proposed change of order, the dependency court need not order a hearing.’ ” (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079.)

“The parent bears the burden of showing both a change of circumstance exists and that the proposed change is in the child’s best interests.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) A section 388 petition is addressed to the court’s discretion, and its ruling will not be disturbed on appeal absent a showing of a clear abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416.) “The denial of a section 388 motion rarely merits reversal.” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

Here, Father sought to set aside the order issued on November 14, 2014, which suspended visitation between Father and Minor based on the sexual abuse. The court ordered visitation to resume when Minor’s therapist deemed it in the best interests of Minor to renew visitation.

Initially, the trial court properly found that there were no changed circumstances. Minor advised her therapist that she did not want to visit with Father because of the sexual abuse just two weeks prior to the finding on the section 388 petition. She also advised the social worker she did not want to visit with Father because of the sexual abuse. Additionally, she was still showing signs of being hypersexual. Father continued to blame Mother for the accusations and was not completing his case plan. The trial court did not err by finding Father had failed to make a prima facie case that the circumstances had changed.

Father insists the visitation order was unlawful and warranted granting the section 388 petition. We disagree.

The determination of visitation is a judicial function and must be made by the juvenile court. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009.) “[T]he juvenile court may delegate to the probation officer or social worker the responsibility to manage the details of visitation, including time, place and manner thereof. . . . ‘Such matters as time, place and manner of visitation do not affect the defined right of a parent to see his or her child and thus do not infringe upon the judicial function.’ ” (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374.) It is only when the juvenile court “delegates to the . . . county welfare department the absolute discretion to determine whether any visitation occurs does the order violate the statutory scheme and separation of powers doctrine.” (*Ibid.*)

“The juvenile court must first determine whether or not visitation should occur . . . and then provide the Department with guidelines as to the prerequisites of visitation or any limitations or required circumstances.” (*In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1237, fn. omitted.)

The two main cases relied upon by the Department and Father are *In re Donovan J.* (1997) 58 Cal.App.4th 1474 (*Donnovan J.*) and *In re Chantal S.* (1996) 13 Cal.4th 196 (*Chantal S.*).

In *Chantal S.*, the California Supreme Court upheld a visitation order that provided the father’s visitation was “to be facilitated by [Chantal’s] therapist,” and required the

father to first attend and make satisfactory progress, as determined by his therapist, in individual psychotherapy before he could begin visiting with his child. (*Chantal S.*, *supra*, 13 Cal.4th at pp. 202, 213-214.) The father in *Chantal S.* argued the visitation order unlawfully delegated to the child's and the father's therapists the discretion to determine whether visitation will occur. (*Id.* at p. 213.) The California Supreme Court determined the order that visitation be facilitated did not vest the therapists with "absolute" discretion to determine whether visitation should occur. It gave the child's therapist "no discretion whatsoever" and "appear[ed] designed merely to mandate that Chantal's therapist cooperate with the court's order that visitation occur once certain conditions are met." (*Ibid.*) Likewise, the part of the order that conferred on the therapist the decision when "satisfactory progress" was achieved was not an unlawful delegation. The *Chantal S.* court explained that the juvenile court had necessarily found that visitation would not be appropriate until the father had made satisfactory progress. (*Id.* at pp. 213-214.)

In *Donnovan J.*, *supra*, 58 Cal.App.4th 1474, the juvenile court ordered that father was to have " 'no visitation rights without permission of minors' therapists.' " (*Id.* at p. 1476.) The appellate court concluded that was an improper delegation of judicial power. It found the order "neither requires that the therapists manage visitation ordered by the court, nor sets criteria (such as satisfactory progress) to inform the therapists when visitation is appropriate. Instead it conditions visitation on the children's therapists' sole discretion. Under this order, the therapists, not the court, have unlimited discretion to

decide whether visitation is appropriate. That is an improper delegation of judicial power. Although a court may base its determination of the appropriateness of visitation on input from therapists, it is the court's duty to make the actual determination." (*Id.* at pp. 1477-1478.)

This case differs from *Donnovan J.* and is more akin to *Chantal S.* Here, the juvenile court did not give unlimited discretion to Minor's therapist in determining visitation. The juvenile court order that Father sought to change by his section 388 petition was the order made on November 14, 2014, at the 12-month status review hearing on the section 300 petition. No oral record of those proceedings has been provided to this court. The order for that date states, "Visits with father and children are ordered temporarily suspended. Court authorize: If therapist recommend visits with father are appropriate, court authorize visitation in therapy session." The juvenile court determined that visitation should occur, but it was up to the therapist to report when Minor was prepared for such visits. Moreover, the juvenile court continued to review the matter, requiring Minor's therapist to submit updates as to the recommendation for visitation. In fact, the juvenile court ordered another update on Minor's progress just prior to this appeal. The juvenile court continued to monitor whether visitation was appropriate and did not delegate its authority to Minor's therapist.

Moreover, "[e]ven assuming arguendo that the order delegated too much judicial discretion, *father* is not prejudiced thereby. As noted above, father does not contest the position that on this record the juvenile court would have been within its discretion if it

simply denied him any visitation. The fact that the juvenile court rejected that course, and instead issued the restrictive order challenged now, amounts to a windfall to father, not a violation of his rights.” (*Chantal S.*, *supra*, 13 Cal.4th at p. 214.)

Here, Minor had been involved in the dependency proceedings for almost three years with Father. She continued to have distress when speaking of Father and did not want to visit with Father. Father had previously told D.P. to have Minor lie about the abuse, and D.P. also suffered increased bedwetting after visiting with Father. Father does not argue that on this record it would have been an abuse of discretion to outright deny visitation. It was clearly not in Minor’s best interests to visit with Father at the time the section 388 petition was filed.

DISPOSITION

The juvenile court’s order denying the section 388 petition is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.